

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
AINSWORTH C. JACKSON	)	FOIA Control No. 2007-046
	)	
On Request for Inspection of Records	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: September 30, 2009**

**Released: October 1, 2009**

By the Commission:

1. By this Memorandum Opinion and Order, we deny an application for review, dated November 14, 2007, by Ainsworth C. Jackson (Jackson),<sup>1</sup> appealing the denial of his request for a waiver of fees in connection with the above-referenced Freedom of Information Act (FOIA) request. We conclude that Jackson has not met the statutory standard for granting a waiver.

**I. BACKGROUND**

2. Jackson's FOIA request sought three categories of information concerning a company called Conversant Technologies, Inc. (Conversant) covering the last seven years: (1) tariffs filed by Conversant, (2) any "limitations" placed on Conversant by the FCC, and (3) any violations "cited against" Conversant. Jackson also sought the identity of a dominant carrier.<sup>2</sup> In support of his fee request, Jackson stated, "As you are aware, the ACT [*i.e.*, the FOIA] allows you to waive all fees if the request is being made in the public interest. I am therefore requesting that you waive all copying fees as this request is being made in the interest of the public."

3. The Associate General Counsel, Administrative Law Division (OGC), denied Jackson's fee waiver request.<sup>3</sup> OGC observed that the FOIA provides that a waiver of FOIA fees may be granted only "if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester."<sup>4</sup> Thus, OGC explained that to qualify for a fee waiver, the requester must demonstrate specifically how

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<sup>1</sup> Letter from Ainsworth C. Jackson to Joel Kaufman, Associate General Counsel (Nov. 14, 2007) (AFR).

<sup>2</sup> Letter from Ainsworth C. Jackson to FOIA Public Liaison (Oct. 15, 2007).

<sup>3</sup> Letter from Joel Kaufman, Associate General Counsel to Ainsworth C. Jackson (Nov. 9, 2007) (Denial).

<sup>4</sup> Denial at 1, *citing* 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 47 C.F.R. § 0.470(e) (fee waiver request must include a statement "explaining with specificity" the reasons demonstrating why requester qualifies for waiver).

disclosure of the materials sought will contribute to the public's understanding of the operations or activities of the government.<sup>5</sup>

4. OGC found that Jackson's request contained no explanation at all of how release of the records would contribute to public understanding of the operations or activities of the government, but only the vague and conclusory assertion that his request was "in the interest of the public."

5. In his AFR, Jackson elaborates on the public interest aspects of his FOIA request. He explains that "[t]he public will greatly benefit from disclosure of this information based on the fact that 'Conversant Technologies' has been over-charging the public for telephone calls for over five (5) years. They have also discriminated in the prices they charge the public. . . ." <sup>6</sup> Jackson contends that the public has the right to know the rates filed with the Commission. Jackson also alleges that Conversant has violated a contract between the GEO Group, Inc. and the Federal Bureau of Prisons as to the rates it can charge.

## II. DISCUSSION

6. We find that OGC correctly denied Jackson's request for a fee waiver for the reasons stated in its Denial. We also find that additional information provided by Jackson in his AFR does not change that result.

7. Assuming for the sake of argument that the information Jackson requests might benefit the public as well as himself to the extent it would disclose alleged malfeasance by Conversant, he has not demonstrated that it would contribute "significantly to public understanding of the operations or activities of the government," as the FOIA requires for a fee waiver.<sup>7</sup> In this regard, Jackson's AFR strongly suggests that his concern is with the operations or activities of Conversant, a private entity, and not those of the government.<sup>8</sup> Further, many, if not most, of the documents requested by Jackson, such as tariffs and any Commission rulings against Conversant, are public records, and disclosure to Jackson would not increase public access to this information.<sup>9</sup> For these reasons, a fee waiver is not justified here.

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<sup>5</sup> See *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1285 (9th Cir. 1987) (*MESS*) (requiring an explanation with "reasonable specificity how disclosure will contribute to public understanding"), citing *National Treasury Employees Union v. Griffin*, 811 F.2d 644, 647 (D.C. Cir. 1987) (burden is on the requester to identify and demonstrate with "reasonable specificity" the public interest to be served).

<sup>6</sup> AFR at 1. Jackson, who is a prison inmate, complains in particular that Conversant, a provider of inmate telephone service, overcharges individuals who are incarcerated. *Id.* at 2. The Commission is examining issues regarding inmate calling services in an ongoing rulemaking proceeding. See, e.g., Public Notice, *Comments Sought on Alternative Rulemaking Proposal Regarding Issues Related to Inmate Calling Services*, DA 07-961 (Mar. 2, 2007) (CC Docket No. 96-128).

<sup>7</sup> See 5 U.S.C. § 552(a)(4)(A)(iii).

<sup>8</sup> See *Brown v. U.S. Patent and Trademark Office*, 445 F.Supp.2d 1347, 1359 (M.D. Fla. 2006), *aff'd*, 266 Fed. Appx. 866 (11th Cir. 2007) (requester not entitled to fee waiver where he did not show "a direct and clear relationship between his request and the identifiable operations or activities of the USPTO").

<sup>9</sup> See *Judicial Watch, Inc. v. Dep't of Justice*, 365 F.3d 1108, 1126-27 (D.C. Cir. 2004) (a nonprofit organization was not entitled to a blanket fee waiver, because many of the documents requested were publicly available).

8. Moreover, Jackson's AFR does not address OGC's observation that Jackson has made no showing demonstrating how he would disseminate the requested information to the public. As OGC correctly explained, this failure is a separate and independent ground for denying the fee waiver.<sup>10</sup>

### III. ORDERING CLAUSE

9. ACCORDINGLY, IT IS ORDERED, that the application for review, dated November 14, 2007, by Ainsworth C. Jackson IS DENIED. Jackson may seek judicial review of this action, pursuant to 5 U.S.C. § 552(a)(4)(B).

10. The officials responsible for this action are the following: Chairman Genachowski and Commissioners Copps, McDowell, Clyburn and Baker.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>10</sup> See *Judicial Watch, Inc. v. United States Dep't of Justice*, 122 F. Supp.2d 13, 18-19 (D.D.C. 2000), citing *MESS*, 835 F.2d at 1286 and *Ogelsby v. United States Dep't of the Army*, 920 F.2d 57, 66 (D.C. Cir. 1990) ("Taken together, *Ogelsby* and [*MESS*] indicate that a requester who does not give specifics regarding a method of disseminating requested information will not meet this factor, even if the requester has the ability to disseminate information").